APPENDIX

The first authority to grant war risk insurance was that contained in the Act of October 6, 1917, c. 105, Sec. 2, 40 Stat. 399, 409–410, amending the War Risk Insurance Act by adding the following sections, among others:

> SEC. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000, or more than $10,000 upon the payment of the premiums as hereinafter provided.
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> SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall * * * be payable only to a spouse, child, grandchild, parent, brother, or sister, and also during total and permanent disability to the injured person, or to any or all of them. The insurance shall be payable in two hundred and forty equal monthly installments. * * *.

Bulletin No. 1 (Regulations and Procedure, U. S. Veterans' Bureau (1930), Part II, pp. 1233, 1235) was promulgated by the Director of the Bureau of War Risk Insurance, Treasury Department, on October 15, 1917, and provides, in part, as follows:

> THE UNITED STATES OF AMERICA, TREASURY DEPARTMENT, BUREAU OF WAR RISK INSURANCE
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> Under the authority granted by Congress in an act * * * and subject in all respects to the provisions of such act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract:
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> Hereby insures from and after the day of , 19 , John Doe, * * * conditioned upon the payment of premiums as herein provided, for the principal amount of $5,000 converted into monthly installments of $28.75 (the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ percent per annum), payable—
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> To the insured, if he/she, while this insurance is in force, shall become totally and permanently disabled, commencing with such disability as established by the award of the director of the bureau and continuing during such disability; and
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> To the beneficiary or beneficiaries hereinafter designated, commencing upon the death of the insured, while the insurance is in force, and (except as otherwise provided) continuing for 240 months if no installments

have been paid for total and permanent disability or if any such installments have been paid, then for a number of months sufficient to make 240 in all: * * *.

Section 304 of the World War Veterans' Act, 1924, as amended (U. S. C., Title 38, Sec. 515) provides, in part:

> In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with an application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) made after June 7, 1924, may be approved if made within one year after July 2, 1926, or within two years after the date of lapse or cancellation: *Provided*, That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further*, That the applicant during his lifetime submits proof satisfactory to the Administrator of Veterans' Affairs showing that he is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance, where the requirements as to the physical condition of the applicant have not been complied with, or, for the reinstatement of the United States Government life insurance (converted insurance), the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not

lapsed, together with interest at the rate of 5 per centum per annum, compounded annually, on each premium from the date said premium is due by the terms of the policy: * * *.

Section 205 of the World War Veterans' Act, 1924 (U. S. C., Title 38, Sec. 494) provides:

> Upon its own motion or upon application the bureau may at any time review an award and, in accordance with the facts found upon such review, may end, diminish, or increase the compensation previously awarded, or, if compensation is increased, or if compensation has been refused, reduced, or discontinued, may (subject to the provisions of Section 210 hereof) award compensation in proportion to the degree of disability sustained as of the date such degree of disability began, but not earlier than the date of discharge or resignation. Except in cases of fraud participated in by the beneficiary, no reduction in compensation shall be made retroactive, and no reduction or discontinuance of compensation shall be effective until the 1st day of the third calendar month next succeeding that in which such reduction or discontinuance is determined.

Letter from the Administrator of Veterans' Affairs to the Solicitor General:

Office of
The Administrator of
Veterans' Affairs

VETERANS' ADMINISTRATION,
Washington, January 14, 1941.

Honorable FRANCIS BIDDLE,
The Solicitor General,
Department of Justice,
Washington, D. C.

MY DEAR MR. SOLICITOR GENERAL: I have your letter of January 11, 1941, in which you inform me that you have under consideration the question of filing a petition for a Writ Certiorari in the case of Harry Florian, Executor of the Last Will and Testament of Anton Florian, Deceased Beneficiary, Plaintiff-Appellant, vs. The United States of America, Defendant-Appellee, and inquire concerning the relation of that decision to the Administration's practice and the cost which might result from an administrative application of the decision.

The point raised in *Florian* vs. *The United States* has not been the subject of a specific formal administrative decision or written issue, for the reason that such a declaration or issue was not regarded as necessary. Until the present case the administrative interpretation on this point has never been questioned.* The Veterans' Administration and its prede-

* In this connection it should be noted that the various service organizations have had access to the files of the Veterans' Administration by specific authority of statute (see U. S. C., Title 38, Sections 456, 551) and, of course, could not have been unaware of this interpretation.

cessors consistently adhered to the view that Section 305 of the World War Veterans' Act contained no provision, either express or by implication, for the revival of insurance under a yearly renewable term contract by reason of compensation arising subsequent to the total permanent disability of the insured. This practice has continued without change under the several amendments to Section 305, originally enacted June 7, 1924 and amended in various particulars July 2, 1926 and May 29, 1928. The Section in its original form and as it now stands contains no language which, in the opinion of the Veterans' Administration, indicates any intention to alter or modify the administrative procedure in this particular. Consequently, the decision of the Circuit Court of Appeals in the *Florian* case is unmistakably contrary to long continued and uninterrupted administrative practice.

It is difficult to estimate with any degree of accuracy the number of cases to which the instant decision might apply, as there are no statistics available to show the number of claims potentially affected, with the natural result that there are also no precise figures available as to the total amount of insurance which may be revived if the Florian case stands unchallenged.

If, however, the decision of the Circuit Court of Appeals here is permitted to stand, claims for insurance previously denied because there was no uncollected compensation available at date of permanent and total disability will be revived where there was uncollected compensation at the date of death. The Florian decision would appear to have potential application to any case in which the first condition of Section 305, World War Veterans' Act, 1924, as amended, may

have been met (that is, where there was uncollected compensation at date of lapse) and where the insured died with compensation uncollected which is payable only by reason of an administrative rating of total and permanent disability. The first condition of Section 305 was met in thousands of cases because there were issued approximately 4,000,000 contracts of yearly renewable term insurance, the vast majority of which lapsed upon discharge. Virtually every case in which the term insurance lapsed at discharge and claim for compensation was made more than sixty days after lapse and allowed as of the date of discharge would meet the first requirement of Section 305 of the World War Veterans' Act, 1924, as amended. Probably in relatively few instances were claims filed within sixty days from discharge and even in these cases administrative action with an award of compensation and an actual payment could seldom be made until after sixty days from discharge, owing to obvious administrative difficulties and the volume of work then involved. Claims for compensation have been filed in approximately one and three-quarter million cases.

While a very accurate estimate may not be given as to the number of cases where posthumous ratings of total permanent disability have been made, these were numerous because death in any case where there was a chronic disease (as distinguished from an accidental or unanticipated death) suggests the likelihood of an earlier total permanent disability; and it was the administrative practice to make such findings after death to insure payment to the estate of the veteran of the full amount of benefits that might be payable under the law even though the vet-

eran did not file claim on such basis prior to his death. The foregoing analysis leads to the conclusion, upon a most conservative basis, that the number of potential cases which would be affected is extremely large. A study indicates that the average amount of term insurance in each instance would probably be about $7,000.00. On this premise the total amount which would be payable if the *Florian* case is to be given the effect which it may be said to call for would ultimately involve many millions. Permit me to urge that every effort be exerted looking toward the filing of a petition for a Writ of Certiorari in this matter.

Very truly yours,

(Sgd.) FRANK T. HINES,
Frank T. Hines,
Administrator.

U. S. GOVERNMENT PRINTING OFFICE: 1941